

MEMO ENDORSED



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June 10, 2024

Via Electronic Filing:

Honorable Nelson S. Roman
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Re: McCann, Roberta and Donald v. Whole Foods Market Group, Inc.
Our File No.: 8208.0095672
Docket No.: 7:23-cv-01026-NSR

Dear Hon. Judge Roman:

We represent the defendant, Whole Foods Market Group, Inc. ("Whole Foods"), in the above-referenced matter.

Whole Foods seeks the court's assistance in handling the late expert disclosure of plaintiff's surgeon, Dr. Buchalter, and obtaining his deposition.

On May 22, 2024, plaintiff for the first-time disclosed Dr. Buchalter as a damages expert and advised that Dr. Buchalter would testify at trial that plaintiff would require additional surgical intervention to her hip. As a result of the subject accident, plaintiff fractured her right hip, had hip surgery, and physical therapy.

Pursuant to the court's directive of May 7, 2024, both parties were to complete all expert depositions by June 11, 2024. When the Court extended the deadline for discovery it was for parties to complete expert depositions of Dr. Baynes and Dr. Hawkins. Both of these experts were previously identified and disclosed as experts. Both parties subsequently waived the doctors' depositions.

Plaintiff's latest expert disclosure of Dr. Buchalter, dated May 22, 2024, was nearly 20 days after the Court's deadline to submit the expert deposition schedule.

However, in a good faith attempt to comply with the June 11, 2024 deadline, Whole Foods advised plaintiff on June 4, 2024, that it wanted to depose Dr. Buchalter and requested plaintiff

secure the doctor's availability. Plaintiff advised that Dr. Buchalter was likely unavailable before June 11, 2024.

Whole Foods respectfully requests that Dr. Buchalter be precluded from testifying at the time of trial because of late disclosure or, alternatively, plaintiff be ordered to secure a date and time for Dr. Buchalter's deposition within the next week.

Thank you for your time and consideration.

Very truly yours,

CHARTWELL LAW

By: 
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The plaintiff is directed to respond to the defendant's letter (ECF No. 34) no later than June 13, 2024.

SO ORDERED.


Hon. Victoria Reznik, U.S.M.J.

Dated: 6/11/2024